

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )

The Development of Operational, Technical )  
 and Spectrum Requirements for Meeting )  
 Federal, State and Local Public Safety )  
 Agency Communication Requirements Through )  
 The Year 2010 )

WT Docket No. 96-86

To: The Commission

**REPLY COMMENTS OF JOVON BROADCASTING CORPORATION**

Jovon Broadcasting Corporation ("Jovon"), the licensee of WJYS(TV), Channel 62, Hammond, Indiana ("WJYS"), by its attorneys, submits these Reply Comments in response to the Second Notice of Proposed Rulemaking ("2nd NPRM") in the above-captioned proceeding<sup>1</sup> to establish service rules for the use of public safety communications services in the 746-806 MHz spectrum band.<sup>2</sup> In an effort to develop rules for the shared use of this band, the 2nd NPRM proposes to reduce sharply the interference protection for television licensees operating on channels 60-69.

More specifically, in the 2nd NPRM, the Commission proposes to adopt co-channel spacing requirements during the digital television ("DTV") transition period based on a 40 dB D/U signal ratio between desired TV signals and undesired co-channel land mobile

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<sup>1</sup>Second Notice of Proposed Rulemaking in WT Docket No. 96-86, FCC 97-373, released October 24, 1997.

<sup>2</sup>The Balanced Budget Act of 1997 allocated 24 megahertz of the 746-806 MHz band for the use of public safety services. See 47 USC § 337(a), as added by the Balanced Budget Act of 1997, § 3004. See also, Report and Order in ET Docket 97-157, FCC- 97-421, released January 6, 1998 ("Allocation Report and Order").

stations.<sup>3</sup> This recommendation represents a reduction of 10 dB from the current standard of 50 dB. Any effort to reduce the existing spacing requirements would impermissibly injure the public interest particularly during the transition to DTV when current and analog service already will be curtailed in many areas. Without the benefit of actual data on the interference protection needs of incumbent channel 60-69 broadcasters during the DTV transition or on the technology or system structure that actually will be employed by new users, hasty action to reduce spacing requirements will be seriously uninformed and imprudent. Moreover, the reduction in spacing requirements would increase signal interference and, in direct contravention of established Commission policy, would result in a loss of television service.

Last April, in adopting the Sixth Report and Order in the DTV proceedings the Commission made clear that “[a]ll existing NTSC and DTV full service broadcast operations on these channels will be fully protected during the transition.”<sup>4</sup> The preservation of established analog service during this crucial period -- for the benefit of both stations and their viewers -- has been a hallmark goal of the DTV Proceeding.<sup>5</sup> In its proceeding to

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<sup>3</sup>2nd NPRM at ¶ 233.

<sup>4</sup>In the Matter of Advanced Television Systems and Their Impact on Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588 (1997) at ¶ 80 (emphasis added) (“DTV Proceeding”).

<sup>5</sup>Id at ¶ 87 (“It is important to protect the existing NTSC service in designing the DTV table so that the public does not lose television service during the transition”).

reallocate spectrum in the 746-806 MHz band for public safety uses<sup>6</sup> the Commission similarly emphasized:

We remain committed to full interference protection for TV licensees during DTV transition. In this regard, we are adding a new footnote . . . to the Table of Frequency Allotments to indicate that existing and new television and digital television (DTV) broadcasting operations in the 746-806 MHz band will be entitled to protection from new services during the DTV transition."<sup>7</sup>

In contrast, the increased signal interference and service loss caused by the contemplated reduction of spacing standards would undermine this pledge.

The long-standing Commission policy of preventing a loss or interruption of broadcast service also would be disserved by relaxing the spacing standards. For example, maintaining service has justified waiver of the Commission's multiple ownership rules,<sup>8</sup> permitted stations to operate as satellite stations,<sup>9</sup> supported grant of a waiver of technical broadcast regulations,<sup>10</sup> and justified a prior licensee's operation of a station after the licensee's operating authority had expired.<sup>11</sup> Here also, the value of maintaining consistency in Commission policy as well as the preservation of free, "off-air" television service provides

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<sup>6</sup>In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, Notice of Proposed Rule Making, ET Docket 97-157, FCC 97-245, released July 10, 1997 ("Allocation Proceeding").

<sup>7</sup>Allocation Report and Order at ¶ 24.

<sup>8</sup>Ligget Broadcast, Inc., 7 FCC Rcd 7124 (1992) (one-to-a-market waiver) and Channel 64 Joint Venture, 3 FCC Rcd 900 (1988) (waiver of the attribution rules).

<sup>9</sup>Stauffer Communications, Inc., 10 FCC Rcd 5165 (1995).

<sup>10</sup>Siete Grand Television, Inc., 7 FCC Rcd 5299 (1992).

<sup>11</sup>RKO General Inc. (WNAC-TV), 89 FCC 2d 361 (1982).

compelling justification for rejecting any proposal to reduce or minimize the current channel spacing requirements.

Unless and until data is obtained on the protection criteria necessary to preserve the service of broadcast licensees using the 746-806 MHz spectrum, the Commission must leave the present channel spacing standards intact. Without the benefit of this information, actions to reduce the current levels of protection will be lacking in reliability and reasoned judgment. Notably, in the 2nd NPRM, the Commission concedes its considerable lack of information. With regard to new users of the spectrum, the Commission confessed, "it is not clear what types of services, technologies, or system architectures may be used for new types of public safety services."<sup>12</sup> The absence of information on DTV transmissions is equally conspicuous. When weighing the options for protection criteria for DTV stations, at best, the Commission could only speculate, "DTV transmissions could exhibit a greater resistance to interference . . . DTV stations may be able to accept a lesser amount of protection . . . ." <sup>13</sup>

Attempting to establish television/land mobile protection standards prior to the actual implementation of DTV, and in a climate of uncertainty and unavailable data, clearly is unwise. The postponement of prior plans to consider a similar dB reduction proposal further demonstrates the error of embracing such a recommendation now. In 1985, the Commission recommended a decrease in the D/U signal ratio from 50 dB to 40 dB for TV/land mobile

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<sup>12</sup>2nd NPRM at ¶ 232.

<sup>13</sup>Id at ¶ 235 (emphasis supplied).

sharing,<sup>14</sup> but held in abeyance a decision on the matter pending completion of the DTV proceedings.<sup>15</sup> That proposal must remain in abeyance. The DTV proceedings are still unresolved and information on both the public safety communications technology to be used and the interference protection needs during the DTV transition is sorely lacking. Given these circumstances, taking actions which significantly jeopardize broadcast service can not be justified.

Jovon currently operates WJYS on NTSC channel 62 and has requested the allotment of channel 64 for use during the DTV transition. Thus a minority-owned, independent station whose NTSC and potential DTV channel allotments both fall within the channel 60-69 range will be uniquely disadvantaged by the increased exposure to interference which would result from a relaxation of the spacing rules. Adoption of any proposal that would unfairly "double burden" WJYS not only disserves the public interest by eliminating broadcast service but also contradicts the Commission's policies and initiatives to increase minority participation in the management and ownership of broadcast stations.<sup>16</sup>

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<sup>14</sup>Amendment of the Rules Concerning Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Notice of Proposed Rulemaking, 101 FCC 2d 852, 861 (1985).

<sup>15</sup>Amendment of the Rules Concerning Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Order, 2 FCC Rcd 6441 (1987).

<sup>16</sup>See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, 10 FCC Rcd 2788 (1995).

Jovon consistently has advocated that the Commission utilize the "non-core" spectrum, such as channels 60-69, during the DTV transition period.<sup>17</sup> Indeed, as demonstrated in its comments filed in both the DTV Proceeding<sup>18</sup> and the Allocation Proceeding,<sup>19</sup> the assignment of DTV channel 64 to WJYS is critical to the station's ability to remain a viable competitor in the delivery of television service in the Chicago market. Thus, Jovon stresses that no existing NTSC or DTV station in this channel band should be faced with a reduction in interference protection before DTV is implemented and before actual interference protection needs can be assessed.

Rather than rush to adopt a standard without adequate information, Jovon supports MSTV's proposal that the Commission establish a committee of all entities who are or may be using the spectrum assigned to broadcast channels 60-69. A committee of broadcasters, representatives from public safety communications services and associated engineering and technology specialists should engage in an informed discussion on this matter, collect the necessary data on interference protection and offer recommendations to the Commission. Before this essential step is taken, any action on current channel spacing standards would be imprudent and premature.

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<sup>17</sup>See Petition of Jovon Broadcasting Corporation for Reconsideration, filed in MM Docket No. 87-268 (June 13, 1997) and Comments of Jovon Broadcasting Corporation, filed in MM Docket 87-268 (December 17, 1997).

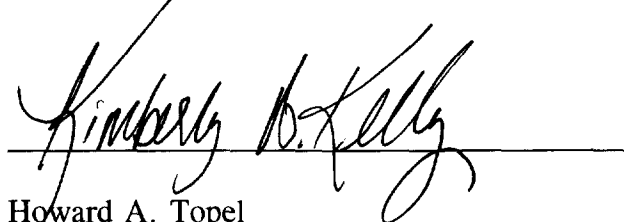
<sup>18</sup>See Id and Jovon Broadcasting Corporation's Comments in Response to Petitions for Reconsideration filed in MM Docket 87-268 (July 18, 1997).

<sup>19</sup>See Comments of Jovon Broadcasting Corporation, filed in ET Docket 97-157 (September 15, 1997).

Because of its impact on the use of broadcast channels 60-69, the present proceeding unavoidably impacts the Commission's efforts to finalize rules for the delivery of digital television service and to allocate effectively frequencies in the 746-806 MHz spectrum band. As earlier emphasized, the Commission's DTV Proceeding and Allocation Proceeding emphatically require the protection of incumbent and DTV television broadcasters in this spectrum from interference from new users. Here also, the Commission must remain faithful to this approach. Jovon, therefore, earnestly urges the Commission to reject any proposal to reduce any minimum channel spacing standards until after relevant data on the interference protection needs of all users of the spectrum has been assembled and thoughtfully considered.

Respectfully submitted,

JOVON BROADCASTING CORPORATION

A handwritten signature in cursive script, appearing to read "Kimberly A. Kelly", is written over a horizontal line.

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Dated: January 26, 1998/62205

## CERTIFICATE OF SERVICE

I, April Johnson, a secretary at the law firm of Fleischman and Walsh, L.L.P. hereby certify that copies of the foregoing Reply Comments of Jovon Broadcasting Corporation were served this 26th day of January 1998, via regular mail, upon the following:

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